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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 14th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 August 1998, at 10 a.m.

Chairman: Mr. GUISSÉ

later: Mr. FAN Guoxiang

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The meeting was called to order at 10.10 a.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION (continued)

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(agenda item 3) (continued) (E/CN.4/Sub.2/1998/4 and 5)

1. Mr. KHALIFA congratulated the authors of the excellent joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/Sub.2/1998/4) who had succeeded in tackling the topic of race, which had already been discussed so many times, from a new and valuable standpoint.

2. Racism was humanity's worst scourge, having provoked conflicts and hostilities from time immemorial. It would be absurd to believe that one day it could be eradicated, and in any event absolutely no progress had been made during the 50 years during which efforts had been made to do so. Yet it was impossible to remain indifferent to the fact that it had been on the increase during the past 20 years and was responsible for many of the ills afflicting humanity at the present time. Despite the scientific and technical progress that had been achieved, poverty prevailed throughout the world, pollution was destroying the planet and peoples were being torn apart by conflicts. Terrorism, although completely unjustifiable, was also closely connected with racism and xenophobia, which nurtured deep-seated feelings of injustice and despair. In that connection he expressed his sympathy to the Governments and peoples of Kenya, Tanzania and the United States, who had quite recently been victims of odious and cowardly terrorist acts.

3. Action was necessary to strike at the root of the evil, namely, increasing injustice and arrogance. The danger that fascism might return to Europe was particularly worrying. Xenophobia was no longer the characteristic feature of extreme rightist groups but was spreading among the population and at the political level. Examples of racism both in Europe and the United States abounded. Africa, which was the first to bear the brunt of that trend, was falling further behind economically. It was also prey to all manner of injustices, slavery and exploitation, and was left to itself. It was not enough to apologise for past injustices as President Clinton had done; action must be taken to provide the African countries with debt relief to develop human resources, and to stop exploiting the continent's natural resources, stirring up conflicts, corrupting Governments and the elites, and sending in mercenaries.

4. Apartheid had been officially abolished in South Africa but had not disappeared. Not only had the White minority launched a counter-offensive in order to preserve its privileges but a privileged Black elite was deliberately being created in order to divide the Black population and was enriching itself at the cost of the Black majority which was still living in apartheid-like conditions. In view of that situation, he believed that the question of South Africa should once again be included in the Sub-Commission's agenda.

5. The CHAIRMAN declared the discussion on agenda item 3 closed.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

(E/CN.4/Sub.2/1998/6-10, E/CN.4/Sub.2/1998/30 and E/CN.4/Sub.2/1997/9)

6. Ms. HAMPSON raised the question of the scope of the regulatory obligations of States under human rights law in view of their duty to ensure respect and protection of both civil and political human rights as well as economic, social and cultural rights. Her own approach to that question which concerned the activities of transnational cooperations was from the opposite end of the spectrum from which such issues were usually considered. Mr. Yokota in his statement had noted that there was increasing recognition of the fact that the obligation of States to ensure respect for human rights in certain circumstances required positive action on their part. The scope of that obligation was not clearly defined but the principle had far-reaching implications, particularly in the absence of obligations of third parties under international human rights instruments. She enumerated four types of actions that States could be obliged to regulate. In the first place there were the actions of State authorities. Secondly there were actions by persons whose acts were held to be imputable to the State, such as measures taken by the board of a nationalized company. Then there were actions by persons whose acts were not directly imputable to the State but were effected in the exercise of what were usually characterized as Government-type functions - such as the treatment of convicted prisoners in privately-run prisons.

7. Lastly, there were actions by persons whose acts were neither directly or indirectly imputable to the State but which gave rise to an obligation on the part of the State to prevent likely human rights violations or to act after such violations had occurred. If an activity carried with it foreseeable risks (for example the marketing of new drugs or the construction of hazardous waste treatment plants), the State could be under an obligation to minimize the risks involved by means of regulation and to protect public health or the environment. The activities of transnational cooperations raised a more complex problem. However, insofar as the State was required to ensure respect for the rights of persons under its jurisdiction and to protect them against violations committed by third parties, it was under an obligation to regulate the activities of international, transnational and national actors when those activities were likely to have a serious impact on the rights of such persons and to ensure that regulations were applied. The obligation was one of prevention, which was beginning to be recognized by human rights enforcement bodies. The State must also, in view of its obligation to ensure the protection and respect for the rights of persons under its jurisdiction,

act after a violation has occurred. In the case of suspect deaths, for example, it should conduct an investigation, independently of the right of the victims to compensation.

8. Only strong and accountable States could ensure the effective protection of human rights by controlling raw market forces. The State's obligation to regulate was an integral part of its obligation to ensure respect and protection for human rights. In submitting those ideas to members of the Sub-Commission for reflection, she hoped that they would consider the question of the scope of the State's obligation to regulate.

9. Mr. FAN Guoxiang took the Chair.

10. Mr. GUISSÉ introduced the working paper he had prepared pursuant to Sub-Commission resolution 1997/18 on the right of access of everyone to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7). The first part of the document, namely, the introduction recalled that water was essential to everyone's life and had always been a crucial factor in the viability and success of civilizations. It also referred to the meetings organized by the United Nations on the subject as well as other regional and international conferences and meetings that had been held to draw up programmes of action with a view to doing something about the fact that over 1 billion people still had no access to drinking water and that almost 4 billion lacked decent sanitation.

11. The second part of the document demonstrated that all human activities (household, agricultural and industrial) depended on supplies of fresh water. The third part was designed to demonstrate that availability of water was at the very heart of fundamental rights, and that the application and promotion of each recognized right, whether collective or individual, was directly or indirectly connected with the problem of water. That was obvious in the case of the right to life, the right to food, the right to health, the right to suitable housing, the right to education (in the developing countries young girls and adolescents were often responsible for fetching water - a task which hampered their schooling), the right to a healthy environment, the right to development (unequal access to drinking water was due to poor management) and the right of peoples to self-determination (which included the exercise of the inalienable right of peoples to complete sovereignty over their natural wealth and resources).

12. The fourth part of the document concluded by stating that, in view of the fact that by the year 2025 almost 3 billion people would lack drinking water, the Sub-Commission should make a serious study of the problem. Since a descriptive study of the various complex issues connected with drinking water supplies and sanitation went beyond the Sub-Commission's framework of activities and was likely to duplicate work being done by other United Nations bodies, he suggested that the Commission should embark upon a study to highlight the relationship between the enjoyment of economic, social and cultural rights and the right to development, on the one hand, and the right to drinking water and sanitation on the other. Obstacles hampering the right to drinking water supplies and sanitation would be analysed in the course of that study, which would supplement previous or ongoing studies. A preliminary report presenting a detailed programme of work would be submitted to the

Sub-Commission's fifty-first session for a critical analysis. An interim report would then be submitted to the fifty-second session and the final report containing conclusions and recommendations would be placed before the Sub-Commission at its fifty-third session. That study would thus help to curb one of the most important scourges afflicting mankind on the threshold of the twenty-first century.

13. Mr. EIDE, introducing his report updating the study on the right to food (E/CN.4/Sub.2/1998/9), said that it was an interim report which would be submitted in its final version in 1999; it would have no financial implications for the United Nations.

14. In reviewing major trends in the food and nutrition situation in the world, he said that about 840 million persons subsisted on diets that were deficient in calories (as against 730 million in 1987). Moreover, approximately 170 million children under five years of age, or 30 per cent of the developing world's children, were underweight and about 2 billion children were affected by iron deficiency and anaemia.

15. In considering the right to adequate food, nutrition should be regarded in a wider context as the result of converging factors relating not only to food but also to health behaviour, health services and the increasing role of medical services, which were of particular importance to vulnerable groups. The main causes of hunger and malnutrition - climatic, political, social and economic - were discussed in paragraph 16, and it was precisely those causes that should be tackled by Governments in order to eliminate food insecurity. He recalled in that connection that in his 1987 study he had proposed a framework for the analysis of State obligations to realize the right to adequate food as well as the various levels of such obligations; that framework was being used at the present time by the Food and Agriculture Organization among others.

16. In paragraphs 20 to 40, he had reviewed the major developments which had, directly or indirectly, promoted interest in the right to food and nutrition since his 1987 report. They included the World Summit for Children (1990), the United Nations Conference on Environment and Development (the Rio Conference, 1992), the first International Conference on Nutrition (1992), the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), the World Summit for Social Development (Copenhagen, 1995), the Fourth World Conference on Women (Beijing, 1995) and the second United Nations Conference on Human Settlements (Habitat II) (Istanbul, 1996). He recalled that, at the World Food Summit, held in Rome in November 1996, Governments had undertaken to make every effort to implement the provisions of article 11 of the International Covenant on Economic, Social and Cultural Rights (the right of everyone to an adequate standard of living) and the relevant provisions of other international and regional instruments.

17. Referring to the activities of United Nations bodies and specialized agencies, he noted that UNICEF had for many years been in the forefront in promoting a human rights perspective in nutrition assessment and that FAO was cooperating with the United Nations High Commissioner for Human Rights with a view to the achievement of the objectives of the World Food Summit. An expert

seminar on the right to adequate food had been held in December 1997 under the auspices of the High Commissioner for Human Rights. The ongoing discussion of the right to food and nutrition and the realization of that right had been promoted to a considerable extent in December 1997 by a policy document finalized by the United Nations Development Programme entitled "Integrating human rights with sustainable human development".

18. The Sub-Committee on Nutrition of the Administrative Committee on Coordination was the focal point for harmonizing nutrition policies and activities in the United Nations system. Its role was to serve as a coordinating mechanism for exchanges of information and technical guidance and to act dynamically to help the United Nations respond to nutritional problems. Through its Working Group on Nutrition, Ethics and Human Rights, the Sub-Committee had gradually opened itself up for the consideration of human rights dimensions.

19. Non-governmental organizations (NGOs) were also taking an increasing interest in the promotion and realization of economic and social rights. Three of them in particular, namely, the Food First Information and Action Network (FIAN), the World Alliance for Nutrition and Human Rights (WANAHR) and the Institut Jacques Maritain International had taken the lead in preparing an International Code of Conduct on the Human Right to Adequate Food, which was to be brought to the attention of appropriate United Nations bodies for consideration and possible further processing as an international reference document, if not an instrument in its own right.

20. Going on to discuss the Sub-Commission's role in the field of economic, and social rights, he said he was convinced that civil and political rights, on the one hand, and economic, social and cultural rights, on the other, were interdependent, and that the latter should not be regarded as an appendix of the former, but as rights in the full sense of the word. A right by definition was something that could be claimed and there had to be redress if the right was violated. The basic question that arose was therefore how to enable individuals to claim their economic and social rights in the same way as they claimed their civil and political rights. However, social and economic measures should not be confused with economic and social rights. In that connection, it was useful to refer to the Limburg principles on the implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht principles on violations of economic, social and cultural rights. It was impossible to speak of economic, social and cultural rights without addressing the question of the State's obligations in that area and the obligations or responsibilities of other actors, such as transnational corporations and the international community, and the ways in which individuals could claim their rights.

21. Referring to Mr. Bengoa's excellent study on poverty, income distribution and globalization (E/CN.4/Sub.2/1998/8), he wholeheartedly endorsed the proposal that a social forum to deal with such matters should be established. It should be used to promote the universal application of human rights, and particularly the right to adequate food proclaimed in many instruments and the recognition of economic and social rights as true human rights, which implied obligations and not merely policies.

22. He also congratulated Mr. Mehedi on his working paper on the realization on the right to education, including education in human rights (E/CN.4/Sub.2/1998/10). He proposed that the Sub-Commission should entrust Mr. Mehedi with the preparation of a study on the question even though the Commission had itself decided to appoint a special rapporteur on the matter. Mr. Mehedi's study would deal with the right to education as a right, whereas the special rapporteur would probably collect information on the educational situation in various parts of the world. Those two studies would therefore be complementary.

23. In conclusion, he expressed the hope that the rights studied by experts would be regarded as true rights, in other words as rights that entailed obligations and required the establishment of machinery making compensation possible when those rights had been violated.

24. Mr. GUISSÉ, introducing his working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1998/6), said that transnational corporations, which had never been satisfactorily defined in international law, were, as economic entities engaged in activities in several countries, a source of legal and jurisdictional conflict and thus gave rise to extremely serious difficulties in the realization of individual and collective economic rights, particularly from the standpoint of the liability of the State.

25. The international legal order must be adapted to the economic situations created by transnational corporations, some of which were extremely powerful and aimed at making as much profit as possible. The United Nations General Assembly had, in resolution 3514 (XXX) of 15 December 1975, condemned all corrupt practices including bribery committed by transnational corporations. A code of conduct for transnational corporations had also been drafted. Moreover, the United Nations Declaration against Corruption and Bribery in International Commercial Transactions encouraged the parties to international transactions to exercise social responsibility and adhere to appropriate standards of ethics, inter alia, through observance of the laws and regulations of the countries in which they conducted business, and taking into account the impact of their activities on economic and social development and protection of the environment and human rights.

26. The activities of transnational corporations were sometimes beneficial, particularly when they concluded headquarters agreements with States and undertook, as part of a progressive policy, to implement collective or individual economic rights. In concluding such agreements, States and transnational corporations should bear in mind article 30 of the Universal Declaration of Human Rights, according to which nothing in the Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

27. Unfortunately the activities of transnational corporations, particularly in the developing countries, were at variance with the Declaration on the Right to Development and in particular its article 3, paragraph 3, which defined development as a global process that should "promote a new international economic order based on sovereign equality, interdependence,

mutual interest and cooperation among all States, as well as ... encourage the observance and realization of human rights". Very often transnational corporations took advantage of political instability and economic upheavals in the developing countries to undermine their national sovereignty.

28. In conclusion, he proposed that the Sub-Commission should establish, without financial implications, a working group in which all regions of the world were to be represented to formulate proposals designed to overcome the problems raised by transnational corporations, particularly under international law.

29. Mr. WEISSBRODT said that 50 years previously, when the Universal Declaration of Human Rights had been drawn up, the world had experienced rapid and profound changes, one of them being the emergence of transnational corporations. Transnational corporations, by their number, now constituted an economic and political force whose power was steadily increasing. Unfortunately, many of them were responsible for human rights abuses by engaging in practices such as child labour, interfering in the activities of trade unions and engaging in destructive ecological practices. In that way they played a critical role in shaping the context in which economic, social and cultural rights were either protected or violated, and therefore deserved more attention on the part of the Sub-Commission.

30. The Sub-Commission should begin by focusing in greater detail on the changing relationships between non-State actors, such as the transnational corporations and nation States. Just as it had done in the case of human rights violations committed by terrorists, the Sub-Commission should prepare a study on transnational corporations, affirming that non-State economic actors had a fundamental responsibility to respect and protect human rights. That responsibility of "every individual and every organ of society" was referred to in the Universal Declaration of Human Rights, and several other instruments emphasized the need to promote an international order in which the rights of individuals could be fully realized. Yet the international order could not be conceived of as comprising only the relationships between nation States. The Sub-Commission should specify the obligations of non-State actors, including the transnational corporations, in protecting human rights, for in that way their human rights practices could be assessed more accurately.

31. Some transnational corporations, and specifically those which depended on their public image to secure their profits, had already adopted their own standards of conduct. While those efforts were commendable there was a need for more consistent monitoring of the implementation of standards, because for want of monitoring, the human rights practices of transnational corporations often remained hidden from international scrutiny. Transnational corporations should be encouraged to adopt policies that ensured not only the human rights of workers but also the rights of people within the larger communities in which they operated.

32. Yet it should be borne in mind that transnational corporations could also promote and protect human rights by the creation of jobs and the transfer of knowledge and information. The profit motive had resulted in questionable human rights practices, such as child labour, but it could also encourage transnational corporations wishing to maintain their position to respect

international norms and thereby to have a positive influence on Governments. However, in order to inform the public it would be helpful to refer to an internationally agreed standard of conduct on the basis of which such corporations could be evaluated. Their evaluation as well as the dissemination of findings constituted important elements of any strategy designed to curb human rights abuses perpetrated by non-State economic actors.

33. There was no accepted body of human rights standards applicable to transnational corporations, nor had any authoritative study been made of the relationship between transnational corporations and human rights. The Sub-Commission could help fill those gaps by embarking on a study to monitor developments with regard to specific human rights guidelines for transnational corporations and suggest mechanisms for independent monitoring and strategies for the implementation of human rights standards. In doing so, the Sub-Commission should consult the transnational corporations, since that would not only help to ensure that they eventually complied with international standards but would also assist the Sub-Commission to understand the ethical codes and mechanisms for monitoring that had already been developed independently by those corporations.

34. In conclusion, he encouraged further study by the Sub-Commission of the practices of transnational corporations and their impact on human rights, and supported the idea of establishing a sessional working group on that important question.

35. Mr. MEHEDI said it had been gratifying to hear Mr. Khalifa establish a relationship between poverty, racism and terrorism. The recent incidents in Kenya and Tanzania had revealed that terrorism was a social scourge of worldwide dimensions which could be curbed only on the basis of international solidarity. It was therefore to be hoped that countries would cooperate in dismantling terrorist networks in their respective territories.

36. He also thanked Mr. Guissé for having recalled that the rights of girls should be taken into account in connection with the right to education. The Beijing Conference could offer a valuable basis for ensuring the protection of the rights not only of girls but also of women in rural areas. It was also gratifying that Mr. Eide had taken measure of the importance of human rights teaching in the Sub-Commission's work.

37. However, he did not share the concern expressed concerning the appointment by the Commission on Human Rights of a special rapporteur on the right to education. That special rapporteur's mandate, as defined in Commission resolution 1998/33 of 11 April 1998, was to report on the progressive realization of the right to education and to help Governments draw up emergency plans of action to curb violations of that right, particularly in respect of women and girls. The mandate of the Sub-Commission's rapporteur, on the other hand, was centred on the content and scope of the right to education as well as on human rights teaching. Those two mandates were fully complementary, and it was commendable that the Sub-Commission had been seized of the question of the right to education and human rights teaching, particularly on the fiftieth anniversary of the Universal Declaration of Human Rights.

38. Mr. KARTASHKIN said that the matters discussed in the documents submitted by previous speakers were of a highly topical nature, particularly those dealing with the right to drinking water and sanitation, the right to food, and the relationship between income distribution and the enjoyment of economic, social and cultural rights. However, although those documents contained highly interesting statistics, decisions and diagrams, they were short on specific recommendations concerning what had to be done about the situations that they described. It would have been useful to indicate what measures should be taken at the national and international level to guarantee those rights, how each individual could exercise his rights, and what were the responsibilities of States in that connection.

39. The right to education was one of the most fundamental rights, since it was the key to the development of individuals. Mr. Mehedi had pinpointed the problem in his working paper (E/CN.4/Sub.2/1998/10) but as he had failed to propose any solution a large number of questions remained unanswered. For example, what did the progressive introduction of free education, in accordance with the International Covenant on Economic, Social and Cultural Rights, represent for the State? What was the relationship between education that was not free and education provided by the State, and in the latter case what should the minimum expenditure be? Once those gaps had been made good, Mr. Mehedi should continue his work and, on the basis of the experience acquired by various countries, submit to the Sub-Commission recommendations ensuring full enjoyment of the right to education.

40. Human rights teaching was of particular importance and implied concerted action at the international level based on what had been done in certain countries. For example, the Russian Federation's Commission on Human Rights had recently organized a conference on the teaching of human rights which had resulted in the training of teachers and the publication of manuals. Participants had recommended that the Russian Government should adopt a State human rights teaching policy in the framework of the United Nations Decade for Human Rights Education (1995-2004). Mr. Mehedi could take those recommendations into account in his report.

41. Mr. PARK congratulated Mr. Mehedi on the quality of his working paper on the right to education. Education was a universal necessity. As stated in article 26 of the Universal Declaration of Human Rights, "Everyone has the right to education ... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms". Inspired by that guiding principle, the international community had, over the years, adopted an impressive array of international instruments proclaiming that right, such as the International Covenant on Economic, Social and Cultural Rights, the World Declaration on Education for All and the Plan of Action of the United Nations Decade for Human Rights Education (1995-2004).

42. The World Public Information Campaign for Human Rights launched in 1998 had unfortunately failed in its aim of increasing public awareness of human rights throughout the world. That was understandable since 23 per cent of adults in the world were unable to read or write. It was discouraging to note that the situation had remained virtually unchanged during the past two decades and for that reason participants in a large international conference

held at Hamburg (Germany) in 1997 had adopted a resolution describing universal access to adult education as a fundamental human right and a condition for full participation in society.

43. In proclaiming the United Nations Decade for Human Rights Education, the General Assembly had requested the High Commissioner for Human Rights to implement the Decade's Plan of Action. The Office of the High Commissioner for Human Rights, with the help of one of the members of the Sub-Commission, had drawn up a set of guidelines together with five objectives, one of which concerned strengthening the role of the mass media. The idea was well taken since journalists and similar professionals could effectively influence public opinion. Lastly, it was encouraging to note that the Commission on Human Rights had decided to appoint a special rapporteur on the right to education and had requested him to coordinate his work with that of Mr. Mehedi, of the Sub-Commission.

44. Mr. Guissé resumed the Chair.

45. Mr. ZHONG Shukong congratulated Mr. Bengoa on his report on income distribution and human rights (E/CN.4/Sub.2/1997/8), which contained an analysis of globalization trends in the context of human rights. The report revealed that the term globalization took on different meanings, depending on a country's position in the world. In countries which were at the centre of world capitalism, it was understood to mean "the reaffirmation and export of their own economic, social, political and cultural values". Globalization favoured the concentration of wealth in the hands of a few. For example, the 20 richest corporations had about five times the equivalent of the GDP of all the developing countries. Globalization was accompanied by the delocation of production and its advantages for large companies. Although it offered new opportunities to some, it was leading to greater inequalities. Moreover, it was reducing the power of States and, especially in the third world countries, their ability to control economic development. Local communities were playing a very important role in the process of preventing social and cultural disintegration brought about by uncontrolled globalization. Generally speaking, it appeared that globalization, although only beneficial for the developed countries, had both positive as well as negative effects for the developing countries.

46. The Sub-Commission should therefore make a detailed examination of problems associated with globalization in the context of the realization of human rights and in particular economic, social and cultural rights and the right to development, on the basis of equity, equality and mutual benefit. It was under a duty to encourage the positive aspects of globalization, namely, international cooperation and partnership on an equitable basis and to limit its negative aspects. Global pillage must be curbed and an equitable system established in which the rights and welfare of all peoples were guaranteed subject to respect for the sovereignty of States.

47. Referring to Mr. Guissé's working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1998/6), he noted that the author had situated the problem in an international context. Giving examples, he had emphasized the fact that wealth was concentrated in the hands of a privileged

minority. He had also drawn attention to a number of perverse effects, such as the increase in the number of poor people (para. 8), the negative impact of the activities of transnational corporations on human rights which could constitute an aspect of international crime (paras. 15 and 16), the unrestrained exploitation of African and Latin American forests which was bringing about the impoverishment of ecosystems (paras. 21 and 22), and lastly, pollution of the environment (para. 27). He had also emphasized that the preparation and application of an appropriate code of conduct should enable the transnational corporations to continue making profits - which was their primary objective - while at the same time respecting the economic, social and cultural rights of peoples.

48. It was held in some quarters that the Sub-Commission's work on transnational corporations, globalization, the right to adequate food and the right to education duplicated that of other United Nations bodies, but it should be borne in mind that only the Sub-Commission considered such matters from the standpoint of the protection and promotion of human rights in the context of the realization of economic, social and cultural rights and the right to development. For that reason, he supported Mr. Guissé's proposal that all such questions should be examined in the broader forum of a working group and that follow-up documents should be submitted to the Sub-Commission at its future sessions.

49. Ms. CASSAM (United Nations Educational, Scientific and Cultural Organization) said it was gratifying that the Sub-Commission had decided to include the question of the right to education - which was the cornerstone of UNESCO's work - and human rights teaching in its agenda. The topic was of great importance since without education it was practically impossible to claim and exercise any other human right. Fears had been expressed that the Sub-Commission's work might duplicate that of UNESCO, but she pointed out that the subject was too important and delicate to be tackled by one specialized agency alone. The right to education had to be extended to 900 million illiterates, most of whom were women. It was quite logical that the Sub-Commission should associate itself with the struggle for the liberation of the human spirit, which was a first step towards the affirmation of the individual and human dignity of all individuals and in particular of girls, women, the poor, the indigenous, the underdeveloped, the abused, the tortured, the deprived, the marginalized and the disenfranchised.

50. Three of the points analysed by Mr. Mehedi in his report on the question (E/CN.4/Sub.2/1998/10) deserved special attention. The first concerned the objectives of education and the conclusions on the subject contained in the report of the Delors International Commission on Education for the Twenty-First century (para. 13) submitted to UNESCO. It was clear that the right to education as a process went beyond the formal school system and that its application should be extended to cover all spheres of life so as to teach individuals how to exercise their right to development, to clean water and sanitation, to food, to health, to environmental protection, to tolerance, peace, democracy and creativity. The idea of life-long learning which liberated the individual was reaffirmed at all meetings of educationalists organized by UNESCO.

51. The second point concerned the economic dimension of the right to education (para. 22). The Delors Commission Report to UNESCO emphasized the fact that spending on education produced long-term social and political benefits. Countries in the throes of a rigorous structural adjustment programme should not overlook that aspect, and the development of their human resources should take priority over the development of their material resources. The transfer of financial resources from the poor to the rich constituted a violation of the right to education in the developing countries. UNESCO therefore urged Mr. Mehedi and other experts to pursue their work in that field.

52. That was also applicable to the third point, namely, the debt burden and its impact on education expenditure in many developing countries. In paragraph 25 of his working paper, Mr. Mehedi implied that it was uncertain who was responsible for that situation. For UNESCO, no such ambiguity or doubt existed; countries should be relieved of that burden. She therefore urged the Sub-Commission to take recent developments at UNESCO into account and hoped that it would support it in its work.

53. Mr. DJONBALIC (Transnational Radical Party) recalled that the Sub-Commission in its resolution 1997/11 had stated that "the global and multidimensional approach defined in the Declaration on the Right to Development should provide a basis for the work undertaken on the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations". Unfortunately, that approach had not been adopted in regions where people suffered from the consequences of the activities of transnational corporations.

54. Three years previously, following the execution in Nigeria of Ken Saro-Wiwa and eight other Ogonis, the international community, shocked, had stated that things must change in that country, particularly as regards the Shell company. Yet so far neither the Nigerian Government nor Shell had taken steps to change the situation of the Ogonis who continued to suffer under intolerable conditions of oppression and to experience intimidation and harassment by the special forces. Environmental problems were likely to become worse because of the suppression of environmental protection movements and Shell's resumption of its operations in Ogoni territory with the support of the army.

55. He also drew attention to serious human rights violations in West Papua as a result of the activities of multinational and transnational corporations and Indonesian mining, oil and logging companies. Resistance was being organized by the local population who were supporting an independence movement, and especially by villagers who were being forcibly relocated to make way for a mining company. It was to be hoped that the new Indonesian Government would embark upon negotiations on the future of West Papua and other serious issues.

56. His organization welcomed Mr. Guissé's working paper on the impact of the activities of transnational corporations on the implementation of economic, social and cultural rights and supported the conclusions he had reached. It was of the view that only the restoration of human rights and fundamental freedoms, including the full democratization of political life,

beginning with the release of all political prisoners, would make it possible to improve the situation in the countries concerned. It also considered that the part played by the armed forces and transnational corporations in causing environmental damage and human suffering should be thoroughly investigated. The international community played an indispensable role in establishing, implementing and monitoring standards concerning the powers and obligations of multinational and transnational corporations, and he therefore urged the Sub-Commission to take decisive action in the matter.

57. Mr. PÉREZ BERRIO (American Association of Jurists) said it was unfortunate that, in his report on entrepreneurship and privatization for economic growth and sustainable development (A/55/428), prepared at the General Assembly's request (resolution 48/180), the Secretary-General adopted a position that was unduly favourable to economic and political interests that advocated the liberalization of markets and a reduced role of the State, and undermined the efforts made by the international community to achieve the objectives of the Charter of the United Nations which were designed to promote the welfare of society and the individual. That position was incompatible with the functions of the highest official of an organization acting on behalf of "the peoples of the United Nations". At the beginning of paragraph 29 of the report, for example, the Secretary-General stated his opposition to "the wide distribution of ownership of privatized assets", which suggested an appeal for the monopoly of major enterprises through transnational capital. Moreover, the report failed to take into account the contradictory studies carried out by various United Nations bodies on the same subject. Document E/CN.4/Sub.2/1998/NGO/20 submitted by the Centre Europe-tiers monde and the American Association of Jurists contained an analysis of the report in question.

58. The influence of transnational corporations was apparent even within the United Nations, where they were invited to participate in the decisions and work of the Secretariat. For example, a branch of the Price Waterhouse transnational company had been selected to reorganize the Centre for Human Rights, which had become the Office of the High Commissioner for Human Rights. In order to follow up Mr. Guissé's working document on the subject, a working group should be established to study the increasing role being played by transnational corporations and their negative influence on major political and economic trends at the national and international levels and within the United Nations, as well as the dangers it held for democracy.

59. Furthermore, the activities of transnational corporations threatened fundamental human rights, as was clear from their control of the distribution of water - a basic necessity - which, in their hands, became a commodity for which a high price had to be paid. In order to achieve their ends, they did not hesitate to corrupt public officials as was evident from the Lyonnaise des eaux case in France.

60. Lastly, his organization considered that the Sub-Commission should continue to deal with the question of the right to education, including human rights teaching, which contributed to the development of the critical spirit that enabled individuals to claim and exercise their rights.

The meeting rose at 1.05 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 15th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 August 1998, at 3 p.m.

Chairman: Mr. GUISSÉ

later: Mr. WEISSBRODT
(Vice-Chairman)

later: Mr. GUISSÉ
(Chairman)

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

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(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS (continued)

The meeting was called to order at 3.10 p.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

(agenda item 4) (continued) (E/CN.4/Sub.2/1998/6-10 and 30; E/CN.4/Sub.2/1998/NGO/5; E/CN.4/Sub.2/1997/9)

1. Mr. KHOURI (Union of Arab Jurists) stressed the importance of not marginalizing economic, social and cultural rights in the various international forums. There was an obligation not on Governments alone but also on the international community to enable the world's population to live safe from famine and disease. That obligation was clearly laid out in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, particularly article 2 and article 11, which stipulated that an adequate standard of living should be attained through international cooperation.

2. Unfortunately, the hegemonistic policies pursued by some countries still formed an obstacle to the attainment of such rights. Hegemony took many forms. Violence was sometimes used, particularly in regions rich in natural resources. Another policy was the use of economic sanctions, notably by the United States of America, directed mostly at developing countries, even though they ran counter to the provisions of international legal instruments and international humanitarian law.

3. In the case of Iraq, sanctions were a tragedy, depriving the population of food, water, medicine and education at every level of society. Article 1, paragraph 2, common to both the International Covenants on Human Rights, stated that in no case might a people be deprived of its own means of subsistence, yet the sanctions imposed on Iraq flew in the face of those principles. It was impossible for the United States of America and the United Kingdom to justify their continuing insistence on the blockade; the inference must be that they had some undeclared intentions. He called on the Sub-Commission to condemn the blockade and to ensure that international human rights instruments were respected.

4. Mr. SATO (International Association of Democratic Lawyers), speaking on behalf of the Japanese Workers' Committee for Human Rights, said that, in October 1993, the Japanese Government had submitted to the Human Rights Committee a report that was so evasive that the Workers' Committee had compiled an alternative report, a practice it had continued every year since. The Government's reaction to the comments of the Human Rights Committee had

also been deeply unsatisfactory. It seemed to have made no effort to implement the Committee's comments and it was reluctant to ratify the first Optional Protocol to the International Covenant on Civil and Political Rights.

5. Little consideration was given to human rights under Japanese Government policy, owing to the fact that Japanese workers were not very conscious of human rights. It was not just management but also trade union leadership which was guilty of despotism and absolutism. Hitachi had dismissed a worker who had refused to work overtime, on one occasion only. The union could have negotiated to protect his rights, but it had not only neglected to do so but had impeded his private legal action. The Kansai Electric Power Company also pursued a discriminatory policy.

6. Age discrimination - at the age of 55, workers in the banking industry had their wages reduced - was also accepted by the unions. Japan had become the world's second largest economic super-Power thanks to its use of discrimination and human rights violations, but such discrimination should be eliminated completely.

7. Ms. NEURY (Centre Europe-Tiers Monde) said that, as the Ugandan Minister of Finance had stated to the World Trade Organization (WTO) in December 1996, the countries of the South had been promised funds, first if they introduced democracy, then if they undertook structural adjustment, then if they liberalized and privatized their economies. All the reforms had been undertaken but no money had been forthcoming.

8. The latest requirement was the proposed multilateral agreement on investment, which had first been mooted in the Organization for Economic Cooperation and Development (OECD). Negotiations concerning the agreement, which was the brainchild of the World Bank, the International Monetary Fund (IMF) and the WTO, all institutions without any democratic representativeness, had excluded the countries of the South, which would, however, be "invited" to join. If the international community adopted that agreement, it would enter a new totalitarian world order run by the transnational corporations.

9. The agreement would give such corporations unlimited "rights" and "freedom" to buy, sell and transfer whatever, whenever and wherever they wished, without any government intervention or regulation. In effect it would restrict the ability of any Government to regulate its country's economy. While giving such corporations new rights and powers, the agreement would not impose on them any obligations regarding employment, the labour force, consumers or the environment.

10. Investors would be given the absolute right to buy anything they wanted, without restriction, while Governments would be obliged to guarantee their full enjoyment of their investments and even to indemnify the investors against any civil disturbance; a provision that would encourage them to restrict social freedoms. The agreement would also give foreign investors the right to sue Governments and local authorities before the International Chamber of Commerce (ICC), while Governments and individual citizens would have no corresponding right to sue the transnational corporations.

11. Her organization and the American Association of Jurists had submitted a joint written statement (E/CN.4/Sub.2/1998/NGO/20) commenting on the Secretary-General's report entitled "Entrepreneurship and privatization for economic growth and sustainable development" (A/52/248). She also mentioned a book recently issued by her organization entitled Attention, un accord peut en cacher un autre.

12. The Sub-Commission should establish a sessional working group on the activities of transnational corporations to identify and examine the effects of their working methods on the enjoyment of economic, social and cultural rights and the right to development and to analyse the compatibility between the various international human rights instruments and the multilateral agreement on investment; should appoint a special rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the realization of the right to drinking water and sanitation services; should request the Commission to set up a follow-up mechanism to deal with violators of economic, social and cultural rights; and should adopt Mr. Bengoa's proposal to establish a social forum.

13. Mr. PARY (Indian Movement "Tupaj Amaru") said that the inexorable advance of globalization, the deregulation of the international financial system and the interference of transnational corporations in every sphere of the world economy constituted an obstacle to the enjoyment of economic, social and cultural rights. The rush to the market economy and free competition was leading to the dismantling of mechanisms and rules of conduct, in both the North and the South. Ultra-liberal globalization, stock-market speculation and the proliferation of organized crime made it more necessary than ever before to establish an international legal instrument to regulate the activities of transnational corporations and their direct investments.

14. A code of conduct was needed for a number of reasons. First, the invisible hand of monopolies and holding companies demanded profitability at all costs, regardless of whether it involved the exploitation of natural resources and the workforce. Secondly, the developing countries found it impossible to control the activities of the transnational corporations through their national legislation and had gradually lost their ability to negotiate. Thirdly, corruption had a detrimental effect on developing economies, with civil servants, parliamentarians, soldiers and businessmen being openly bribed. There should be clear and precise rules regarding responsibility for such activities under international law.

15. It would also be useful to harmonize the legislation of developing countries on the movement of transnational corporations. The situation was even more difficult for the formerly socialist countries, where the introduction of the market economy, privatization and other aspects of capitalism had revealed a huge legislative void.

16. As a first step towards a code of conduct, he urged the Sub-Commission to establish an inter-sessional working group to investigate the illegal transfer of capital from poor countries to rich ones and fraudulent and speculative transactions on the stock exchange; to define the ownership structure of multinational firms and their global strategies; to examine the legality of mergers between transnational corporations and banks that led to

the formation of monopolies; to regulate the abuse of financial institutions such as the World Bank and the IMF; to study the interference of such corporations in the political life of States; to determine their responsibility for environmental pollution, the destruction of natural resources and the laundering of drug money; to prepare data on foreign direct investment (FDI) in developing countries; and to adopt the proposal of Mr. Bengoa that a social forum should be established.

17. Mr. GARCIA (Pax Romana) said that the draft multilateral agreement on investment as it currently stood could mean a further qualitative leap in the process of the globalization of markets. Described by the Director-General of the WTO as a constitution for the world economy, the draft agreement contained an imbalance between the rights it generously granted to foreign investors, most of which were transnational corporations, and the obligations imposed upon States, populations and the environment which could only be described as flagrant. The inclusion of lost profits, taxation, war and strikes as admissible grounds for complaint could lead to a wave of applications for financial compensation against the Governments of the signatory States.

18. The European Union had initially endeavoured to tackle the issues concerned in the General Agreement on Tariffs and Trade (GATT) and the WTO, while the United States of America had pressed for negotiations in OECD, arguing that that would make it possible to reach a comprehensive agreement to which non-OECD members could then easily accede. The consensus among industrialized States had disappeared entirely, however, because of the secrecy in which the OECD had conducted the negotiations.

19. The proposal in the draft agreement to ban performance requirements should be rejected, since the liberalization of FDI implied a danger that capital flows would be diverted to places where environmental or workers' protection regulations were lowest, and there was thus a real danger that national environmental and social standards would be undermined. It was also unacceptable that the draft agreement should place transnational corporations on virtually the same political footing as States, allowing the former to lodge complaints against the latter if an investment could not be made. The Governments of the contracting parties would not, however, be given the option of initiating a settlement procedure against a foreign investor.

20. It was also regrettable that the agreement would initially exclude harmonization of the taxation of investments and profits, which meant that transnational corporations would be able to continue manipulating the bases of tax assessment through anti-market transfer prices between their individual divisions. In view of the increasing integration of markets, some initial progress could have been proposed towards such harmonization.

21. The draft agreement did not even incorporate the OECD guidelines for transnational corporations adopted 20 years previously. The European Parliament had passed a resolution in March 1998 calling on the parliaments and Governments of the member States of the European Union not to accept the draft agreement as it stood.

22. There was a need for a broader public debate and monitoring of the negotiations being conducted in secret in the framework of the OECD. His organization thus drew the attention of the Sub-Commission to the matter and to the urgency of making a public statement regarding the effects of the draft agreement on economic, social and cultural rights and its compatibility with the international human rights conventions. He reiterated his organization's full support for an inter-sessional working group of the Commission on Human Rights with a mandate to identify and examine the effects of the working methods and activities of transnational corporations.

23. Mr. YOKOTA said that Mr. Guissé's working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1998/6) provided an excellent overview of a complex issue, defining a transnational corporation, dealing with the difficulty of regulating the activities of such corporations and the need to adapt international and municipal law effectively to control their behaviour and adequately addressing the issues of corruption, environmental damage and criminal activities in which some transnational corporations were involved.

24. It was necessary, however, to identify further the kind of activities which had a negative impact on the enjoyment of human rights. Corruption and environmental damage were not the only ones. Mr. Weissbrodt had mentioned labour rights and the treatment of workers, but there were also companies engaged in experimenting with, producing and selling inhumane arms and weapons, which should be strictly regulated. Transnational corporations which engaged in sexual tourism and other aspects of the sex industry should also be prohibited. It was necessary to make it absolutely clear that transnational corporations must pay careful attention to the human rights and environmental implications of all their activities.

25. Moreover, transnational corporations should be very careful when considering investing in or trading with a country that had a serious record of violation of human rights. Although the specific activity of the transnational corporation might not affect the human rights of the country in which it was operating, the fact of its investment in such a country could have enormous adverse implications for human rights.

26. To ensure that adequate consideration would be given to the human rights implications of their activities, transnational corporations should establish a section within their respective legal departments to deal with human rights. They should also establish a procedure or mechanism within their corporate structure to receive and address complaints regarding the impact of any of their activities on the lives of local residents.

27. As Mr. Guissé had recognized, the activities of transnational corporations had not only a negative impact upon the enjoyment of human rights, but also a positive aspect in respect of job creation, stimulation of the economy, expansion of trade, and so forth. It was important not just to stigmatize transnational corporations as enemies of human rights, but to regulate those of their activities which were negative in respect of human rights and to encourage those which had a positive impact. He fully agreed with Mr. Guissé and Mr. Weissbrodt that the topic should be studied further

with a view to drafting international human rights standards to be respected by transnational corporations and, possibly, to creating an international mechanism to monitor their activities.

28. Ms. MIR (International Peace Bureau) said that there were some aspects of Mr. Mehedi's working paper on the realization of the right to education, including education in human rights (E/CN.4/Sub.2/1998/10) that could have been expanded. Apart from the fact that no international instrument currently existed which emphasized the importance of human rights education, there were also certain situations regarding the right to education in general which the Sub-Commission needed to address.

29. One was the impact of colonization and foreign occupation on the realization of the right to education: the Sub-Commission needed to consider how to prevent the misuse of education by a State to eradicate the cultural, religious, ethnic or even political identity of a people. An occupying power - whether India in Kashmir or Israel in Palestine - would never comply with its duty to respect the parents' right to ensure education and teaching in conformity with their own religious and philosophical convictions. The issue should, perhaps, have been incorporated in Mr. Mehedi's working paper, or the Sub-Commission might consider studying it in greater depth in a separate paper.

30. Another aspect of the mutilation of the right to education of people under foreign occupation was that, when an occupied people rose to demand their freedom and the right to self-determination, the occupying Power made it impossible for them to receive education. The prevailing atmosphere in Indian-occupied Kashmir deterred parents from sending their children to school.

31. Mr. BANDIER (United Towns Agency for North-South Cooperation), pointing to the iniquitous inequalities in development illustrated by, on the one hand, scientific and technological progress and, on the other, the wretchedness and illiteracy of hundreds of millions of people, called for the creation of a human future based on ethical values and a new international order in which all mankind would be able to control, master and humanize technical and scientific progress.

32. Mr. HUSSAIN (European Union of Public Relations) said that the concept of true development implied that people had the opportunity to realize their full potential in all fields and realizing the right to development presupposed an environment which allowed people freely to articulate their aspirations and through their collective will expressed through elected representatives determine how they wished to fashion their lives.

33. The people of the Northern Areas of Gilgit and Baltistan, occupied by Pakistan in 1947 and still subject to the whims of that colonial master, had been kept deliberately backward and had not enjoyed any development. They had no newspapers, no television station, no universities, no engineering or medical colleges, no polytechnics, no major hospitals, hardly any industry and very few proper roads. No political activity was permitted. The region had a male literacy rate of only 15 per cent. Pakistan had deprived it of education in order to continue its stranglehold.

34. He called upon the Sub-Commission to help the people of the Northern Areas to achieve their freedom and to use its good offices to transmit their appeal for help to the entire international community and he called upon Pakistan to give them the right to self-rule, allow them to elect their own representatives, and to withdraw the colonial rule it had imposed upon them in 1947.

35. Mr. DJENDOUBI (International Federation of Human Rights Leagues) said that transnational corporations had an increasing impact on the respect for and promotion of human rights, as well as disproportionate power in the countries where they operated. That was particularly serious in the case of dictatorships, where transnational corporations offered essential support to regimes condemned by the international community.

36. However, transnational corporations could also exercise a positive impact in terms of job creation, bringing technological progress to countries, stimulating economic growth and developing and exploiting natural resources when Governments lacked the finance, technology and know-how to do so. That positive potential was frequently unutilized, and the impact of transnational corporations on economic and social rights was all too often negative. They had brought about a weakening in the negotiating positions of workers and their organizations and they profited from the vulnerability of specific groups, particularly women, minorities and migrant workers.

37. The action of transnational corporations had often caused environmental damage and a general lowering of standards through the privatization of entire regions rich in natural resources, often leading to expropriation and a deterioration in vital areas of the lives of the local populations. In some cases, transnational corporations had encouraged their host Governments to commit serious violations of civil and political rights through the forced movements of peoples, the use of forced labour and even execution, torture, intimidation or harassment of those who opposed such violations.

38. His organization thus urged the Sub-Commission to propose to the Commission that a study be carried out on human rights violations resulting from the activities of transnational corporations. Such a study should deal not only with the theoretical aspects of the problem but also with specific situations. Mr. Bengoa's proposal that a social forum be established was a positive one, which should be explored in cooperation with the Committee on Economic, Social and Cultural Rights.

39. Ms. DIENG-THIAM (Pax Christi International) said that the enjoyment of civil and political rights was a vain aspiration for people deprived of the bare necessities of life. According to the 1994 Human Development Report, published by the United Nations Development Programme (UNDP), it would take between US$ 30 and 40 billion to meet all such needs, reduce illiteracy by half and provide basic medical care for all - a negligible sum compared with the billions wasted on armaments. The Sudan, for example, could easily feed its population if it spent less on weapons. World food aid was currently being diverted from the starving to feed the combatants. In Kosovo, the Serb army was pursuing a scorched-earth policy, terrorizing the inhabitants and destroying their homes. Both situations were examples of non-recognition by the State of the cultural rights of minorities.

40. Transnational corporations displayed an utter contempt for the values of local communities in their schemes to exploit non-renewable resources. The goal of profit maximization exacerbated disparities and inevitably resulted in human rights violations. Globalization undermined civil society and subjected States themselves to the amoral law of international financial capitalism.

41. Entire communities were often displaced and deprived of their livelihoods to make way for petroleum, mining or dam-building projects. Protests were met with arbitrary detention or extrajudicial killings. Some multinationals supported or connived with dictatorships or corrupt regimes.

42. A hypocritical international community turned a blind eye to human rights violations in China, an important trading partner, while the Helms-Burton Act sought to punish companies for trading with Cuba and Iraq's civilian population was subjected to merciless economic sanctions.

43. The structural adjustment policies imposed on countries whose economic plight was basically due to mismanagement, corruption and misuse of public funds should be replaced by "social adjustment" policies. Transnational corporations should be required to play an active part in social development, observing International Labour Organization (ILO) standards, preserving the local environment and respecting the health and cultural rights of local communities. Her organization advocated the adoption of codes of conduct based on universal human rights principles to combat social injustice.

44. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that General Assembly resolution 50/184 of 21 December 1995 identified the core elements of the right to development and offered guidance to the international community on its realization. Basic principles included the centrality of the human person and the continuing relationship between democracy, development and human rights. The resolution stressed the need for evaluation mechanisms but those devised by bodies such as the Commission on Human Rights were flawed in that they focused on economic factors and ignored the relevance of favourable environmental conditions for human rights enjoyment, the social and political forces that hampered development and the role of armed mercenaries and marauders.

45. For over eight years, the State of Jammu and Kashmir had been subjected to violence sponsored by Pakistan which had entailed large-scale economic destruction. Pakistani mercenaries massacred innocent people and targeted bridges, schools and buildings, deliberately obstructing social and economic development initiatives. Under those circumstances, it was impossible to create the "atmosphere" that the Intergovernmental Group of Experts of the Commission on Human Rights on the right to development considered necessary for the realization of that right. He therefore urged the Sub-Commission to bring pressure to bear on Pakistan to withdraw its mercenaries and to allow the people of Jammu and Kashmir to realize their right to development.

46. Mr. Weissbrodt, Vice-Chairman, took the Chair.

47. Ms. MARWAH (International Institute for Non-Aligned Studies) said that India had often been criticized for adopting on achieving independence an economic model that was contrary to Western ideology, but it had chosen the

path of self-sufficiency because a subjugated people needed a renewed belief in its own capabilities. There was no universal model for development. Each nation must decide on its own pace in the light of its resource base and its cultural and social traditions. The more ancient a society, the more gradual the process of change should be. India had thus avoided many of the disruptive effects of rapid development.

48. Every developing country needed assistance, but the conditions attached to economic assistance often served the political and strategic interests of the donor nations. Developing countries were asked to reform their social and productive structures to fit models developed elsewhere. If they failed to comply, they were cut off from the markets and deprived of aid flows.

49. The development efforts of the South Asian Association for Regional Cooperation (SAARC) were being hindered by behaviour left over from the colonial era. The international community and NGOs should encourage regional cooperation and provide the necessary technological and scientific assistance instead of offering political advice, however well meant. The adoption of systems and models that had proved successful elsewhere could actually deter the process of development.

50. Mr. AL-KHOEI (Al-Khoei Foundation) said that his organization was based on an Islamic humanitarian ethos which respected the social and economic rights of individuals and communities worldwide, whether Muslim or not, and which supported intra- and inter-faith dialogue. It was also particularly concerned to promote the development of human rights relating to women in an Islamic context.

51. The Foundation had engaged in discussions with the World Food Programme (WFP) and UNDP on possible collaboration with a view to distributing humanitarian supplies in Afghanistan and planned to play a constructive role in the UNDP peace initiative for the country.

52. Exclusion politics was an issue that needed to be addressed. The discourse of liberal secularism was subject to few checks and balances and often tended to exclude other ways of being. In some countries, the invisible code of exclusion could affect access to credit and contracts and lead to discrimination in employment and education. Entire sectors of the economy were sometimes "out of bounds" so that excluded groups were "ghettoized". More initiatives were needed to address exclusion and marginalization and his organization would play an active role in promoting debate on the issue.

53. Mr. PERET (Franciscans International) said that Brazil's non-compliance with the two International Covenants on Human Rights was a matter of great concern. Since President Cardoso had taken office in January 1995, 132 rural workers had been assassinated and the worst massacres in recent history had taken place. The victims were rural workers, lawyers, technicians, union leaders and religious, all connected with the struggle for land. The perpetrators enjoyed impunity. Many of the killings were promoted by the military police or carried out by paramilitary groups hired by organizations of landlords.

54. Slave labour continued to exist in Brazil. The Roman Catholic Land Pastoral Commission had reported 19 cases involving 2,487 persons in 1996.

55. In a country where income disparities were extreme, it was estimated that 22 per cent of the population were on the verge of starvation. A drought in north-eastern Brazil had affected about 10 million people. Landless families had been particularly severely hit, as their basic food allowance had been cut off by the Federal Government. By delaying agrarian reform, the Government had forced 57,000 families to live in camps as internal refugees, at the mercy of paramilitary groups.

56. Large-scale foreign investment in Brazil in recent years had enriched only a small portion of the population to the detriment of the majority, so that the "developed" countries shared responsibility for such human rights violations with the Brazilian Government. The situation was a clear example of the interdependence of civil and political rights and economic, social and cultural ones.

57. Ms. PARKER (International Educational Development, Inc.) said that there was a direct relationship between the realization of economic, social and cultural rights and the imposition of economic sanctions. Since measures adopted by the Security Council under Articles 41 and 42 of the Charter should conform to the Organization's general purposes, sanctions regimes should not adversely affect the economic, social and cultural rights of the populations concerned and should be fundamentally just.

58. In its General Comment No. 8, the Committee on Economic, Social and Cultural Rights had established a framework for evaluating sanctions in the light of economic rights. United Nations and regional human rights bodies could review sanctions regimes that seemed to violate human rights and the International Court of Justice could be asked to express an opinion on whether they breached international law.

59. Her organization urged the Sub-Commission to call for the lifting of the sanctions affecting the people of Burundi which, according to the Special Rapporteur on the situation of human rights in Burundi, were having a disastrous effect on the general population (E/CN.4/1998/72).

60. Economic sanctions on Iraq had led to the deaths of over a million and a half children and to widespread starvation and disease. The medical crisis was exacerbated by the presence of depleted uranium used during the Gulf War. A fresh threat to life and health was the screw-worm fly epidemic, which was spreading to neighbouring countries because of sanctions on the products and drugs needed to bring it under control. She urged the Sub-Commission to call for the lifting of all aspects of the sanctions regime against Iraq that had any impact on economic, social and cultural rights.

61. Mrs. BHAN (Afro-Asian Peoples' Solidarity Organization) said that many newly independent nations had sought to create institutions that would ensure a secure and stable environment for development and the preservation of hard-won individual and societal freedoms. Their achievements could easily be destroyed, however, by a handful of people who espoused an ideology of hate and violence and despised personal liberty and democratic freedoms.

62. The situation in Jammu and Kashmir illustrated how the right to development of a people could be usurped, and development itself reversed by terrorism. In only nine years, foreign-sponsored terrorists had destroyed industry, hospitals, schools, government offices, roads and bridges, leaving a once prosperous land barren. Nearly 400,000 Kashmiris had been rendered homeless and forced to eke out a living in refugee camps. Massacres of Kashmiris at the hands of Afghans, Pakistanis and other foreigners continued to be reported daily.

63. The international community must urge all supporters of terrorism to eschew their base causes and ideology to ensure that the right to development was returned to those whose lives had been disrupted. The time had come for India and Pakistan to leave past bitterness behind and to build a future based on the ideals of progress and development.

64. Mr. GANDHI (Indian Council of Education) said that the term "development" implied that all peoples must be given the opportunity and means to participate in the benefits of mankind's achievements. The development process did not merely involve material gain; it also covered the social, cultural, educational and political aspects of the lives of individuals and societies. The right to improve one's standard of living without impinging on the rights of others involved a collaborative effort among people living in different parts of the world; differences of religion, race, colour, creed or political ideology must not be used to benefit one segment of society at the expense of others.

65. When pursuing developmental goals, the world community should act to preserve the physical and spiritual heritage of the peoples. Instead, alien ideas were being imposed on peoples for ideological or political reasons, as conditions for economic help, or even at gunpoint, and ancient traditions and values were being usurped in the pursuit of material wealth and destructive ways of life. The cocoon which the family and community had traditionally provided to children and elders was being rent by modern development techniques emphasizing individual initiative.

66. Whether in Afghanistan or Africa or Jammu and Kashmir, the continuing conflicts were pushing societies which had once been stable lower down the developmental scale. The most horrifying aspect of the past decade had been the emergence of proxy armies which hired their services to the highest bidder. Nation States either acquiesced in their activities or found themselves impotent to deal with the phenomenon. Increasing numbers of countries were being reduced to the status of victims, forced to divert scarce resources to war rather than development. Future generations would rue the day when the international community watched such events and stood idly by.

67. Civil society, especially the non-governmental organizations (NGOs), must use its moral weight to convince Governments that the path along which an increasing number of them were venturing would result in the destruction not only of their perceived adversaries, but also, eventually, of their own people.

68. Mr. REHMAN (International Institute for Peace) said that he belonged to the Northern Areas of Gilgit and Baltistan that had historically formed part of the State of Jammu and Kashmir. Their current indeterminate status had had a negative impact on the people's right to development.

69. Although Pakistan itself was a self-proclaimed democracy, the people of the Northern Areas were denied the right of participating in the democratic process and Pakistan was conducting a deliberate strategy to hold back their development. There were only one hundred doctors for the whole region; the health budget amounted to a third of that received by a single hospital in Islamabad. There were only two colleges and 48 schools, with no opportunities for higher education or technical training. The region was also lacking in industry, communications and transport. The right to development was a mere slogan there and he called upon the Sub-Commission to demand that the Pakistani authorities accord his people the right to self-rule and self-determination.

70. Mr. SHIMOJI (World Federation of Trade Unions) said that the ability of people to realize their economic, social and cultural rights depended not only on the internal situation in their country, but also on the environment in their neighbourhood. Increasingly, that environment was being fashioned by profit-led transnational corporations which equated material wealth with progress, ignoring its impact on human development and basic human rights. The American transnational UNOCAL, was, for example, busy ingratiating itself with the Taliban in order to profit from Afghanistan's rich mineral resources. While the United States lectured the world on human rights, one of its transnationals was turning a blind eye to Taliban oppression. Meanwhile, Afghan women were kept in virtual imprisonment in their homes in a scenario reminiscent of the Dark Ages. UNOCAL had also been charged in a United States court with crimes against humanity in connection with the use of slave labour by the Myanmar regime to build a pipeline.

71. South Asia was also bearing the social costs of the activities of transnationals. Old civilizations, in which personal integrity, the family and community had been the mainstay, were being persuaded to abandon the traditions of their forefathers to espouse western values which stressed individual welfare and the philosophy of profit. Societies, as yet unprepared to meet the costs involved, were being injected with the "wonder of consumerism". Those costs included suicide, family disintegration and child prostitution, and the transnationals had no strategy for mitigating them, nor any interest in doing so.

72. Improvements in living standards would result from the activities of transnationals only if a human rights watchdog body monitored their activities. A special working group should thus be established to present to each session of the Sub-Commission a case study of a transnational operating in a developing country.

73. Mr. Guissé resumed the Chair.

74. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education), speaking also on behalf of Entraide Universitaire Mondiale, said that resolution 1997/7, in which the Sub-Commission had decided to place

on its agenda the question of the right to education, and particularly human rights education, had demonstrated the catalytic role of the Sub-Commission within the human rights mechanism. The resolution had generated far-reaching action on the right to education, including the nomination of a Special Rapporteur by the Commission on Human Rights and the decision by the Committee on Economic, Social and Cultural Rights to devote a forthcoming general debate to the issue. The United Nations Educational, Scientific and Cultural Organization (UNESCO) had also welcomed the Sub-Commission's initiative which would serve to generate institutional cooperation for the protection of human rights.

75. The excellent working paper prepared by Mr. Mehedi (E/CN.4/Sub.2/1998/10) could serve as a model for the study of other economic, social and cultural rights. Besides clarifying many ambiguities surrounding the right to education, the paper had highlighted areas in which further urgent study was required. In particular, there was a need to examine the responsibilities of States, who should neither have a monopoly of education nor eschew their responsibility through privatization. Inspiration might indeed be found in the Limbourg and Maastricht principles.

76. Given the importance of indicators to the analysis of the economic, social and cultural rights, the organizations he was representing would be willing to contribute their long experience to the analysis of that complex issue. It was to be hoped that Mr. Mehedi would be able to continue his important work, particularly as it related to the legal domain.

77. Mr. SOTTAS (World Organization Against Torture) said that the right to development had been on the agenda of the United Nations for nearly four decades. In the early days, theorists had viewed technological development as the new tool which would render possible a rational management of the planet's resources and a harmonious organization of societies. They had dreamed of a new international order based on the right to development, which would include the underprivileged and raise them to a higher and more humane level. On the eve of the new century, however, those objectives seemed illusory. Politicians had little power to regulate the global economy which had emerged, and which had a highly interdependent dynamism of its own. The conclusions of the various major conferences on social matters implied that, in the new unified economic order, individual actors must either sink or swim. The role of States had been reduced to managing welfare programmes to mitigate the negative effects of globalization.

78. The increased responsibility of States to guarantee social, economic and social rights had been accompanied by an erosion of their ability to control national economies. Economic control was largely in the hands of powerful economic actors whose growth had a logic of its own which was in no way dependent on satisfying the basic needs of the people of the world. The result had been piecemeal and partial legislation which sought to combat social problems which could be tackled coherently only at the global level.

79. Certain associations in the West had, for example, attempted to boycott the products of child labour in the developing countries by improving the labelling of consumer goods. That solution ignored the fact that many heavily

indebted families depended for their income on the sale of such products, that the persons exploiting those families were often hardly better off themselves and that the only alternative for many child workers was the street.

80. As many of the reports published by his organization had shown, violence against street children was closely linked to the problem of marginalization in otherwise comparatively well-developed societies. Boycotting the products of child labour thus merely risked exacerbating the problem. As in the case of so many other social problems linked to the distortion of international development, no satisfactory institutional solution to the problem of child labour was yet in place.

81. The ILO, with its mandate to regulate labour conditions, had neither the competence nor the means to propose alternative policies, and even the World Bank, charged as it was with defining development policies, could offer only palliatives. The endless crises and fluctuations of world financial markets and their effects on national economies simply highlighted the inadequacy of the Bretton Woods institutions which were supposed to avert such crises.

82. One solution, which had been proposed over 20 years previously, was that of the "Tobin" tax. Benefiting the countries most in need, the tax would be levied on all financial transactions with a view to curbing speculation and facilitating commerce. In view of the growth of powerful transnationals which had escaped all political control, it was vital that a regulatory institutional framework be created at the international level to respond in a coherent, global manner to the whole gamut of problems emanating from neo-liberal globalization.

83. Democratization of the international order, involving a strengthening of institutions at the international, regional and national levels, as well as greater public participation in decision-making, was thus a prerequisite for the realization of the right to development.

84. The CHAIRMAN said that all speakers must adhere very strictly to their time allocations, especially in view of the time lost as a result of meetings with the Bureau of the Commission. He also reminded them that alleged violations of human rights raised under agenda item 2 should not be repeated under other agenda items.

The meeting rose at 6 p.m.